

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO 2004-0032-EXEC

In the Matter of the Diversion and Use of Water
by
BOULDER CREEK GOLF AND COUNTRY CLUB INC.

SOURCE: Hare Creek and an Unnamed Stream both tributary to Boulder Creek thence
San Lorenzo River

COUNTY: Santa Cruz

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE EXECUTIVE DIRECTOR:

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (SWRCB) following issuance of Administrative Civil Liability Complaint No. 262.5-27 (ACL Complaint), against the Boulder Creek Golf and Country Club, Inc. (BCGCC). The SWRCB's Division of Water Rights (Division) and BCGCC have agreed to settle this matter in lieu of proceeding to hearing in accordance with the attached Settlement Agreement. The issuance of an order or decision pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

BCGCC owns and operates Hare Reservoir Nos. 1 and 2, located on Hare Creek, and Reservoir No. 3, located on an unnamed stream known as Robin Hood Creek, for irrigation of an 18-hole golf course. BCGCC operates the irrigation system for the golf course by transferring water between the three reservoirs. Water in Hare Reservoir No. 2 is released through an outlet valve to Hare Reservoir No. 1. Water at Hare Reservoir No. 1 is pumped to irrigate 12 holes located west of Highway 236 or is gravity piped under Highway 236 to Reservoir No. 3. Water at Reservoir No. 3 is pumped to irrigate 6 holes located east of Highway 236.

License 8199 (Application 19877), which was issued on June 5, 1967, authorizes the collection to storage of 45 acre-feet of water from Hare Creek in Hare Reservoir No. 1. The season of diversion is October 1 of each year to May 1 of the succeeding year, and the authorized uses of water are irrigation of the Boulder Creek golf course and domestic use within the Big Basin Water Company service area. BCGCC does not provide water for domestic use.

Permit 18224 (Application 24172), which was issued on May 1, 1981, authorizes collection to storage of 61.5 acre-feet of water from Hare Creek in Hare Reservoir No. 2. The season of diversion is November 1 of each year to April 30 of the succeeding year, and the authorized uses of water are irrigation of the Boulder Creek golf course and domestic use within the Big Basin Water Company service area. BCGCC does not provide water for domestic use. Permit 18224 contains special terms (terms 13 through 18) to protect and maintain fishery resources and riparian habitat in Hare Creek, Boulder Creek, and the San Lorenzo River. BCGCC states that it has lost storage capacity in Hare Reservoir No. 2 due to sedimentation from upstream sources, and accordingly, has inadequate capacity to meet the release requirement of Permit 18224.

In 1966 BCGCC filed Statement of Water Diversion and Use No. 323, claiming a riparian right for the diversion and use of water from an unnamed stream (Robin Hood Creek) tributary to Boulder Creek.

Reservoir No. 3 serves a total of 22 acres (6 golf holes). The Division and BCGCC dispute whether 12 acres (3 golf holes Nos. 13, 14, 15 on APN 086-491-27) are riparian to Robin Hood Creek.

By certified mail dated July 23, 2003, the Division issued ACL Complaint No. 262.5-27 against BCGCC. The ACL alleges that BCGCC has operated an unauthorized reservoir located on an unnamed stream (Robin Hood Creek) tributary to Boulder Creek for more than 10 years; and BCGCC has failed to comply with the terms and conditions of Permit 18224, including failing to make required releases from storage to maintain specified downstream flows, failing to install and maintain year round measuring devices that are satisfactory to the SWRCB, failing to make any payment to the DFG for the replacement of 1,000 steelhead trout yearlings, and failing to

maintain and submit bimonthly records to the SWRCB, all constituting a trespass under Water Code section 1052.

By letter dated August 13, 2003, BCGCC's authorized representative requested a hearing on behalf of BCGCC to contest ACL Complaint No. 262.5-27.

3.0 SETTLEMENT AGREEMENT

The Settlement Agreement requires BCGCC to pay \$5,000 to the SWRCB within 20 days of the effective date of the Settlement Agreement, file a petition for extension of time including payment of all applicable fees within 30 days of the effective date of the Settlement Agreement, file a petition for change including payment of all applicable fees within 30 days of the effective date of the Settlement Agreement, and comply with other timelines for completing specified tasks. If BCGCC fails to comply with the terms of the Settlement Agreement, Permit 18224, License 8199, and any other applicable provisions of law, the Division shall require and BCGCC agrees to immediately pay the remainder of the \$15,000 civil liability assessed in ACL Complaint No. 262.5-27. BCGCC agrees to rescind its request for a hearing dated August 13, 2003.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division and BCGCC is approved and hereby incorporated by reference into this Order.

Dated: June 28, 2004

ORIGINAL SIGNED BY HARRY M. SCHUELLER for
Celeste Cantú
Executive Director

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SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Boulder Creek Golf and Country Club (BCGCC) through its authorized representative, Bill Aragona, General Manager, and the State Water Resources Control Board (SWRCB), through Victoria Whitney, Chief, Division of Water Rights (Division). The parties enter into this Settlement Agreement because it is their collective desire to settle the issues related to BCGCC's unauthorized diversions of water, and continued threat thereof to the violations of permit terms and conditions described in Administrative Civil Liability (ACL) Complaint No. 262.5-27; and to resolve operational concerns regarding Hare Reservoir No. 2 and Reservoir No. 3. This Settlement Agreement will be submitted to the Executive Director of the SWRCB for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the Executive Director issues an order approving the Settlement Agreement.

BACKGROUND

The Division of Water Rights and BCGCC stipulate to the following facts:

1. Pursuant to Water Code section 1052, subdivision (a), the "diversion or use of water subject to this division other than as authorized in this division is a trespass." Subdivision (b) provides that the SWRCB may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs. The SWRCB also may issue a cease and desist order in response to a trespass and threat thereof, or a violation of a permit or license term or condition. (Wat. Code, § 1831, subs. (a), (d).)
2. BCGCC owns and operates Hare Reservoir Nos. 1 and 2, located on Hare Creek, and Reservoir No. 3, located on an unnamed stream known as Robin Hood Creek, for irrigation of an 18-hole golf course. BCGCC operates the irrigation system for the golf course by transferring water between the three reservoirs. Water in Hare Reservoir No. 2 is released through an outlet valve to Hare Reservoir No. 1. Water at Hare Reservoir No. 1 is pumped to irrigate 12 holes located west of Highway 236 or is gravity piped under Highway 236 to Reservoir No. 3. Water at Reservoir No. 3 is pumped to irrigate 6 holes located east of Highway 236.
3. License 8199 (Application 19877), which was issued on June 5, 1967, authorizes the collection to storage of 45 acre-feet of water from Hare Creek in Hare Reservoir No. 1. The season of diversion is October 1 of each year to May 1 of the succeeding year, and the authorized uses of water are irrigation of the Boulder Creek golf course and domestic use within the Big Basin Water Company service area. BCGCC does not provide water for domestic use.
4. Permit 18224 (Application 24172), which was issued on May 1, 1981, authorizes collection to storage of 61.5 acre-feet of water from Hare Creek in Hare Reservoir No. 2. The season of diversion is November 1 of each year to April 30 of the succeeding year, and the authorized uses of water are irrigation of the Boulder Creek golf course and domestic use within the Big Basin Water Company service area. BCGCC does not provide water for domestic use. Permit 18224 contains special terms (terms 13 through 18) to protect and maintain fishery

resources and riparian habitat in Hare Creek, Boulder Creek, and the San Lorenzo River. BCGCC states that it has lost storage capacity in Hare Reservoir No. 2 due to sedimentation from upstream sources, and accordingly, has inadequate capacity to meet the release requirement of Permit 18224.

5. In 1966 BCGCC filed Statement of Water Diversion and Use No. 323, claiming a riparian right for the diversion and use of water from an unnamed stream (Robin Hood Creek) tributary to Boulder Creek.
6. Reservoir No. 3 serves a total of 22 acres (6 golf holes). The Division and BCGCC dispute whether 12 acres (3 golf holes Nos. 13, 14, 15 on APN 086-491-27) are riparian to Robin Hood Creek.
7. By certified mail dated July 23, 2003, the Division issued ACL Complaint No. 262.5-27 against BCGCC. The ACL alleges that BCGCC has operated an unauthorized reservoir located on an unnamed stream (Robin Hood Creek) tributary to Boulder Creek for more than 10 years; and BCGCC has failed to comply with the terms and conditions of Permit 18224, including failing to make required releases from storage to maintain specified downstream flows, failing to install and maintain year round measuring devices that are satisfactory to the SWRCB, failing to make any payment to the DFG for the replacement of 1,000 steelhead trout yearlings, and failing to maintain and submit bimonthly records to the SWRCB, all constituting a trespass under Water Code section 1052.
8. By letter dated August 13, 2003, BCGCC's authorized representative requested a hearing on behalf of BCGCC to contest ACL Complaint No. 262.5-27.

AGREEMENT

The Division and BCGCC agree to settle this matter on the following terms:

1. Within 20 days of the effective date of this Settlement Agreement, BCGCC shall remit payment of \$5,000 to the SWRCB. By submittal of this payment, BCGCC acknowledges that water has been diverted without authorization and that BCGCC has violated terms in Permit 18224. BCGCC shall only divert water in compliance with the terms of this Settlement Agreement, Permit 18224, License 8199, and any other applicable provisions of law. If BCGCC fails to meet the timelines established in this Settlement Agreement or fails to comply with the terms of this Settlement Agreement, Permit 18224, License 8199, and any other applicable provisions of law, the Division shall require and BCGCC agrees to immediately pay the remainder of the \$15,000 civil liability assessed in ACL Complaint No. 262.5-27.
2. Within 30 days of the effective date of this Settlement Agreement, BCGCC shall file a petition for extension of time for Permit 18224, including payment of all applicable fees, and shall diligently pursue approval of the petition.

3. Within 30 days of the effective date of this Settlement Agreement, BCGCC shall file a petition for change for Permit 18224, including payment of all applicable fees, and shall diligently pursue approval of the petition. At a minimum, the petition shall request the following changes:
 - a) Addition of two points of re-diversion (one on Hare Creek at Hare Reservoir No. 1 dam, and the other on Robin Hood Creek at Reservoir No. 3 dam);
 - b) Addition of a place of off-stream storage at Reservoir No. 3;
 - c) Redistribution of storage to include the capacity of Reservoir No. 3;
4. Within 60 days of the effective date of this Settlement Agreement, BCGCC shall provide evidence of riparian rights to serve the golf course or file an application for direct diversion. Alternatively, BCGCC shall demonstrate through its monitoring plan required by term 5 of this Settlement Agreement that water is not directly diverted to non-riparian parcels of the golf course.
5. Within 60 days of the effective date of this Settlement Agreement, BCGCC shall submit a monitoring plan for approval by the Chief of the Division of Water Rights. BCGCC shall thereafter respond to any deficiencies identified by the Division within 30 days of notification of the deficiencies. The plan shall include the following:
 - a) A detailed description of how BCGCC will monitor Hare Creek flows and ensure that water will be bypassed and released as specified in Permit 18224. This plan shall include an Operator's Manual describing the steps BCGCC operators shall use to measure, record and physically bypass or release water from Hare Reservoir Nos. 1 and 2 to maintain downstream Hare Creek flows.
 - b) A description of how BCGCC will operate Reservoir No. 3 to prevent future storage of inflow from Robin Hood Creek. This description shall include provisions to ensure and verify that water diverted from Robin Hood Creek is used for irrigation purposes on riparian lands or released from Reservoir No. 3 within 30 days. It shall include an Operator's Manual describing the steps BCGCC operators shall use to measure, record and operate the Reservoir No. 3.
 - c) The monitoring plan shall also describe in detail the specifications for the following:
 - (i) A stream flow measuring device on Robin Hood Creek upstream of Reservoir No. 3;
 - (ii) A stream flow measuring device on Hare Creek upstream of Hare Reservoir No. 2;
 - (iii) A stream flow measuring device on Hare Creek within 100 yards of the confluence with Boulder Creek;
 - (iv) Reservoir staff gauges at Hare Reservoir Nos. 1 and 2, and Reservoir No. 3;
 - (v) A flow meter on the transfer pipeline between Hare Reservoir No. 1 and Reservoir No. 3;

- (vi) A measuring device to monitor the amount of water pumped from Hare Reservoir No. 1 for irrigation use;
- (vii) A measuring device to monitor the amount of water pumped from Reservoir No. 3 for irrigation use.

The Division acknowledges that measuring devices have been installed pursuant to parts (ii), (iii), and (iv) of this term, except the Reservoir No. 3 staff gauge. The Division and BCGCC acknowledge that the Division Chief has not made any finding to date of the adequacy of these devices.

6. Within 60 days of Division's notice of approval of a monitoring plan, BCGCC shall install and thereafter maintain the measuring devices required by term 5(c) of this agreement and submit photographs of each installation. BCGCC shall monitor and record on a worksheet developed by BCGCC and approved by the Division, flows, reservoir levels and volumes, and amounts of water pumped, a minimum of once weekly. BCGCC shall record any calculations and conversions on the worksheet on the same day the measuring device readings are made. BCGCC shall maintain the records on-site and submit a copy of the records for the previous calendar year with its annual progress report by permittee for Permit 18224 to the Division.
7. Within 60 days of Division notice of approval of a monitoring plan, BCGCC shall submit a streamflow rating curve/table for each of the three streamflow measuring devices described in term 5(c) (i), (ii), and (iii). Each streamflow rating curve/table shall show the depth of water to corresponding stream flow. If the rating of stream flow in Robin Hood and Hare Creeks cannot be completed within the time specified due to stream flow conditions, BCGCC shall submit a schedule identifying the work still required to be done and the dates for completion of the work to the Division Chief for approval prior to the expiration of the 60 day period. At the discretion of the Division Chief, an extension of time may be granted for the rating of the stream flow measuring devices.
8. Within 90 days of the effective date of this Settlement Agreement, BCGCC shall submit reservoir survey contour maps for Hare Reservoir No. 1, Hare Reservoir No. 2, and Reservoir No. 3 that shall include an area capacity curve showing depth of water to corresponding volume of water for each reservoir. Each area capacity curve shall be correlated to its corresponding reservoir staff gage. Each map and capacity curve shall represent the existing capacity of the reservoir and shall be certified by a registered civil engineer or land surveyor.
9. Provided BCGCC complies with the terms of this Settlement Agreement, the Division will not require BCGCC to file an application to appropriate water from Robin Hood Creek for Reservoir No. 3.
10. BCGCC agrees to allow Division staff reasonable access (with notice of no less than 3 days) to the facilities described herein for routine water right inspections and to verify compliance with the conditions of this Settlement Agreement.

11. Unless otherwise provided, BCGCC agrees to provide all submittals required by this settlement agreement within 90 days of the effective date of the settlement agreement.
12. The Division agrees that BCGCC's acceptance and compliance with the terms of this settlement are sufficient to remedy the past unauthorized diversions and violations of permit terms and conditions, including any diversion to storage at Reservoir No. 3. In its discretion, however, the Division may make future findings, or initiate enforcement proceedings, for any violation of the terms of this Agreement or BCGCC's permit or license, or as otherwise allowed by law.
13. BCGCC agrees that acceptance of this settlement shall rescind BCGCC's authorized representative's request for hearing dated August 13, 2003.
14. During the pendency of the petition requesting revision of terms 13, 14, and 16 of Permit 18224, the Division will exercise its discretion regarding enforcement actions concerning violations of these permit terms.
15. Miscellaneous:
 - (i) *Independent Judgment.* Each party represents and declares that in executing this Settlement Agreement it relies solely on its own judgment, belief, and knowledge concerning the nature, extent, and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations or statements regarding any matters made by the other parties hereto or by any person representing them.
 - (ii) *Additional Documents.* Each party agrees that it will cooperate fully in executing any additional and further documents necessary to give full effect to this Settlement Agreement.
 - (iii) *Entire Agreement.* This Settlement Agreement contains the entire agreement between the parties and supersedes and replaces any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises, or representations, made by the other party other than those contained in this Settlement Agreement.
 - (iv) *Mutual Agreement.* The parties have agreed to the particular language in this Settlement Agreement, and this Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
 - (v) *Counterparts.* This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

SETTLEMENT AGREEMENT

6

Boulder Creek Golf and Country Club

- (vi) *Reasonableness of Settlement.* The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
- (vii) *Section Headings.* The parties intend that the section headings of this Settlement Agreement be used solely for convenience of reference and that they shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of this Settlement Agreement.
- (viii) *Effective Date.* This Settlement Agreement shall become effective immediately on adoption of the SWRCB's Executive Director's order approving the Settlement Agreement.
- (ix) *Choice of Law.* This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
- (x) *Authorization.* Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.

Date: 6-25-04

Boulder Creek Golf and Country Club

By

Bill Aragona

Bill Aragona
General Manager

Date: June 23, 2004

Division of Water Rights

By

Victoria Whitney

Victoria Whitney, Chief
Division of Water Rights